

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 10, 1997

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Thomas J. Dunleavy
Maureen O. Helmer

CASE 97-V-0684 - Application of Milestone Communications of New York, L.P. for Approval of a Renewal by Option of its Cable Television Franchise for the Town of Taylor (Cortland County) Initial Case No. 11434.

ORDER APPROVING RENEWAL

(Issued and Effective July 11, 1997)

BY THE COMMISSION:

The above-captioned application was submitted by Milestone Communications of New York, L.P. (Milestone) on April 2, 1997. A copy of the same was served on the Town and all local notice requirements have been met. No comments or objections have been received.

This application is governed by Section 222 of the Public Service Law which requires our approval unless we find specific violations of law, the regulations of this Commission, or the public interest. Section 222(4) of the Public Service Law provides that we may approve the renewal contingent upon compliance with standards or conditions consistent with the public interest. Having reviewed this application in the context of all applicable statutory and regulatory standards, we have determined to approve the renewal subject to conditions as hereinafter set forth.

The application seeks our approval of a renewal of a franchise agreement executed by the Town and Milestone on September 27, 1987, which agreement contains an option to renew in favor of the company. The company has properly exercised its

option. The renewal term is for a period of five years. Various matters require comment.

First, we find that the renewal agreement substantially complies with Section 595.1 of our rules with one exception. The agreement does not contain a provision in accordance with Section 595.1(r) which states explicitly that the terms and conditions of the franchise are subject to the Commission's approval. Our approval is granted on the condition that the franchise be deemed to contain such a provision.

Second, there are several provisions of the agreement which are inconsistent with the standards contained in 9 NYCRR Section 595.4 relative to public, educational and governmental (PEG) access. Our approval is granted upon the condition that the franchisee complies with the minimum standards embodied in the rule.

Third, Section 6(J) of the franchise contains a formula whereby a subscriber in a line extension area would pay a different basic rate than subscribers in the primary service area in lieu of paying a contribution in aid of construction as provided for in Section 595.5 of our rules. Section 9 of the franchise further provides that extensions beyond the primary service area will be made in accordance with Section 595.5 of our rules. We shall construe Section 6(J) as an equalization of revenues provision that shall only be applied in cases where it would be more beneficial to subscribers than application of the line extension formula contained in Section 595.5 of our rules.

Fourth, the franchise contains a number of provisions regarding consumer protection and customer service which are not consistent with the provisions of 9 NYCRR §§ 590 and 596. For example, Section 6(G) of the franchise states that a late charge will be imposed on bills not "[p]aid by the 20th of the month" whereas Section 590.63 of our rules provides that late charges may not be imposed until forty-five (45) days have elapsed from the time the bill is mailed. We wish to make clear that any instance where there is an inconsistency between a franchise

provision and our rules, the provision most favorable to the subscriber and the franchisor shall apply.

Finally, the renewal agreement contains provisions not required by Part 595 of the Commission's rules. Our approval of these provisions is granted to the extent that they pertain to the provision of cable service and are, and remain, consistent with Article 11, our regulations, policies and orders and applicable federal statutes and regulations. In the event of an ambiguity in any such provision, or among separate provisions of the agreement, the agreement shall be construed in a manner most favorable to the franchisor.

The Commission orders:

1. Pursuant to Section 222 of the Public Service Law and the rules and regulations of this Commission, the application of Milestone Communications of New York, L.P. for a renewal of its cable television franchise for the Town of Taylor (Cortland County) is hereby approved, subject to the terms and conditions set forth herein. The term of the renewal shall extend until October 13, 2002.

2. This Order does not in any way confer rights or privileges other than those granted in the underlying franchise and the certificate holder remains subject to the obligations imposed by Article 11 of the Public Service Law, the underlying franchise and all applicable rules, regulations and orders of this Commission.

3. This proceeding is closed.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary